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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

[REDACTED]

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 18, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance, a hearing was held on August 25, 2015, at Milwaukee, Wisconsin. Hearings previously scheduled for June, 2015, July, 2015, and August, 2015, were rescheduled at petitioner's request.

The issue for determination is whether the agency properly determined the Petitioner is no longer functionally eligible to continue IRIS waiver services.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

Attorney Elizabeth Mamerow  
6737 West Washington Street, Suite 3230  
Milwaukee, WI 53124

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By:

[REDACTED]  
Bureau of Long-Term Support  
1 West Wilson  
Madison, WI

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County. Petitioner has a cognitive disability.

2. On May 23, 2014, May 7, 2015, and June 9, 2015, Long Term Care Functional Screens were completed for the Petitioner. All three screens found the Petitioner is independent with all activities of daily living (ADLs).
3. The June 9, 2015, LTCFS determined that the Petitioner requires assistance with meal preparation, money management, laundry and/or chores, and transportation. It noted that he has significant limitations with regard to learning new tasks and problem solving with regard to those new tasks. It further noted that he lacks reading comprehension skills, and he requires frequent cueing, reminding, and supervision to complete his job duties appropriately. The Petitioner was found to be functionally eligible in the developmental disability (DD) target group.
4. On May 12, 2015, the agency issued a Notice of Action to the Petitioner informing him that he no longer meets the required level of care for the IRIS program and that his benefits will terminate on a date determined by his County Income Maintenance department.
5. On May 18, 2015, an appeal was filed on the Petitioner's behalf with the Division of Hearings and Appeals.

### **DISCUSSION**

The IRIS program was developed pursuant to a Medical Assistance waiver obtained by the State of Wisconsin, pursuant to section 6087 of the Deficit Reduction Act of 2005 (DRA), and section 1915(j) of the Social Security Act. It is a self-directed personal care program. The federal government has promulgated 42 C.F.R. §441.450 - .484 to provide general guidance for this program. Those regulations require the Department's agent to assess the participant's needs and preferences (including health status) as a condition of IRIS participation. Id., §441.466. The Department's agent must also develop a service plan based on the assessed needs. Further, "all of the State's applicable policies and procedures associated with service plan development must be carried out ..." Id. §441.468.

An IRIS participant must be elderly, or an adult with physical or developmental disabilities. See IRIS General Information at [www.dhs.wisconsin.gov/bdds/IRIS/general.htm](http://www.dhs.wisconsin.gov/bdds/IRIS/general.htm). The disabilities must be such that the person requires a level of care equal to the level of a nursing home. DHS Medicaid Eligibility Handbook, §37.1.3. To qualify for a nursing home level of care a person must have a long-term care condition expected to last at least one year. See Overview of the Long Term Care Functional Screen, §1.2, found at [www.dhs.wisconsin.gov/lcicare/FunctionalScreen/WebCT/instructions1.htm](http://www.dhs.wisconsin.gov/lcicare/FunctionalScreen/WebCT/instructions1.htm).

The Wisconsin Department of Health Services Medicaid Eligibility Handbook (MEH) also describes the IRIS program:

#### **37.1.3 IRIS Eligibility**

The IRIS option is available to people living in Family Care counties when they come to the ADRC and are found in need of publicly-funded long term care services. It is also available to Family Care members (and Partnership members, if Partnership is also operated in the county) if the member requests to change to IRIS. (Such individuals would need to be disenrolled from their managed care long-term support program in order to participate in IRIS).

Individuals who wish to participate in IRIS must meet the following criteria in order to qualify:

- Reside in a county operating Family Care,
- Have a nursing home level of care as determined by the LTC Functional Screen,
- and
- All Medicaid Home- and Community-Based waiver financial and non-financial eligibility criteria

MEH, §§37.1.1 and 37.1.3.

The levels of care for waiver programs are:

1. Nursing Home (formerly Comprehensive NH)
2. Non-Nursing Home (formerly Intermediate and Comprehensive non-NH)

See MEH, §29.4.

Nursing home level of care or comprehensive functional capacity is defined at Wis. Admin. Code, §DHS 10.33(2)(c):


(c) Comprehensive functional capacity level. A person is functionally eligible at the comprehensive level if the person requires ongoing care, assistance or supervision from another person, as is evidenced by any of the following findings from application of the functional screening:

1. The person cannot safely or appropriately perform 3 or more activities of daily living.
2. The person cannot safely or appropriately perform 2 or more ADLs and one or more instrumental activities of daily living.
3. The person cannot safely or appropriately perform 5 or more IADLs.
4. The person cannot safely or appropriately perform one or more ADL and 3 or more IADLs and has cognitive impairment.
5. The person cannot safely or appropriately perform 4 or more IADLs and has cognitive impairment.
6. The person has a complicating condition that limits the person's ability to independently meet his or her needs as evidenced by meeting both of the following conditions:
  - a. The person requires frequent medical or social intervention to safely maintain an acceptable health or developmental status; or requires frequent changes in service due to intermittent or unpredictable changes in his or her condition; or requires a range of medical or social interventions due to a multiplicity of conditions.
  - b. The person has a developmental disability that requires specialized services; or has impaired cognition exhibited by memory deficits or disorientation to person, place or time; or has impaired decision making ability exhibited by wandering, physical abuse of self or others, self neglect or resistance to needed care.

Non-nursing home or Intermediate functional capacity is defined at Wis. Admin. Code, §DHS 10.33(2)(d):

d) Intermediate functional capacity level. A person is functionally eligible at the intermediate level if the person is at risk of losing his or her independence or functional capacity unless he or she receives assistance from others, as is evidenced by a finding from application of the functional screening that the person needs assistance to safely or appropriately perform either of the following:


1. One or more ADL.
2. One or more of the following critical IADLs:

- 
- a. Management of medications and treatments.
  - b. Meal preparation and nutrition.
  - c. Money management.

The Department has developed a computerized functional assessment screening system called the Long Term Care Functional Screen (LTCFS). The system relies upon a face-to-face interview with a quality assurance screener who has at least a bachelor of science degree in a health or human services related field, with at least one year of experience working with the target populations (or, if not, an individual otherwise specifically approved by the Department based upon like combination of education and experience). The screener asks the applicant or a recipient at a periodic review, questions about his or her medical conditions, needs, cares, skills, activities of daily living, and utilization of professional medical providers to meet these needs. The assessor then submits the Functional Screen Report for the person to the Department's Division of Disability and Elder Services. The Department enters the LTCFS data into a computer program to see if the person meets any of the required levels of care. If the assessor enters information into the functional screen correctly, then it is assumed that the computer will accurately determine the level of care.

The ADLs considered under the LTCFS are bathing, dressing, eating, mobility in the home, toileting and transferring. The IADLs are meal preparation, medication administration and management, money management, laundry and/or chores, use of the telephone, transportation, overnight care or supervision and employment. See LTCFS Instructions, Module 4, §4.1 at <http://www.dhs.wisconsin.gov/lcfs/FunctionalScreen/WebCT/instructions4.htm>.

There is no dispute that the Petitioner does not require assistance with any ADLs. The most recent LTCFS specifies that the Petitioner does require assistance with meal preparation, laundry/chores, money management, transportation and employment. Thus, he meets the criteria of number 5 of the Comprehensive Functional Capacity definition. He requires assistance and cannot safely or appropriately perform 4 or more IADLs and he has a cognitive impairment. Under the code definition he meets the Comprehensive, or Nursing Home, level of care. Based upon the clear definition of the functional levels in the administrative code, I find that petitioner remains eligible for IRIS at the Nursing Home level of care.

I note that the petitioner has successfully appealed a previous level of care determination. See, DHA case no. . The Decision in that case also concluded that the petitioner met the criteria of number 5 of the Comprehensive Functional Capacity definition. The respondent has not established any improvement or change in his capacities that would merit a different conclusion in the present case. The petitioner requested at hearing that I include in my order a requirement that the respondent change the LTCFS processing, and correct the inherent conflict in the respondent's "logic." My jurisdiction does not reach that extent. It is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

### **CONCLUSIONS OF LAW**

The petitioner remains functionally eligible for IRIS at the nursing home level of care as defined in DHS 10 of the Wisconsin Administrative Code.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to continue the Petitioner's eligibility for the IRIS at a nursing home level of care. This action shall be taken within 10 days of the date of this Decision.

### REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### APPEAL TO COURT

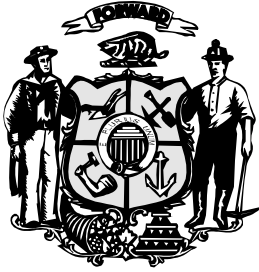
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 21st day of October, 2015

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\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on October 21, 2015.

Bureau of Long-Term Support  
Attorney Elizabeth Mamerow